IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 378 OF 2004.

Woods Beach Hotels Ltd.
A Company incorporated under the
Companies Act, 1956 having its
Registered Office at Dadar,
Mumbai-400 014. .... Petitioner.

Versus

1. Recovery/Sale Officer
of the Central Registrar of
Co-operative Societies,
having office at C/o. The Mapusa
Urban Co-op. Bank of Goa Limited,
Nandadeep, Mapusa, Goa.

2. The Mapusa Urban Co-op. Bank
of Goa Limited, having office
at Nandadeep, Mapusa, Goa. .... Respondents.

Shri Sanjeev Poonalekar, Advocate for the Petitioner.

Shri J.P. Mulgaonkar, Advocate for the Respondents.

CORAM: A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE: 29th MARCH, 2005.

P. C.:

Heard Shri S. Poonalekar and Shri J.P. Mulgaonkar on behalf of the Petitioner and the Respondents respectively.

2. In this petition, the petitioner-company seeks a writ, order or

direction to the respondents directing them to restore status quo of the property in question and thereafter to deal with the property in accordance with the provisions of law and in accordance with the principles of natural justice after giving statutory hearing to the petitioner.

3. As stated by Shri Poonalekar, the learned counsel of the petitioner-company, the petitioner had purchased a property at Anjuna on or about 23.12.1988. M/s. Walbro Constructions, a proprietory concern of one Mr. Walawalkar, had taken a loan from respondent No.2 and for repayment of the said loan, the petitioner-company had stood as a guarantor and not only that, had also mortgaged the said property in favour of the respondent No.2. Subsequently, it appears that the share-holding in the petitioner-company was transferred from the said Walawalkar family to the Virkar family, but the fact remains that in or about October, 1994 the respondent No.2 filed a dispute before the Assistant Registrar of Co-operative Societies against the said M/s. Walbro Constructions as well as the petitioner-company and an award was passed by the Assistant Registrar on or about 26.8.1995 which award was not challenged either by the said Shri Walawalkar nor by the petitioner-company. Subsequently, in the year 1999 or thereabout, respondent No.2 initiated recovery proceedings for the recovery of Rs.23,04,595/- by way of principal amount and Rs.29,30,552/- by way of interest and

further interest at the rate of 20% from 12.8.99 with costs of Rs.1000/-. Proclamations for sale of the said property known as “Soranto” and surveyed under No.179/1 of Anjuna village was firstly published on 30.12.99 and again on 27.12.2000 for auctions to be held on 7.2.2000 and 31.1.2001 respectively. The said publications were made after due notice to the judgment debtors and as there were no bidders on the said dates and again on 3.5.2001, another auction was held on 28.3.2002 and again as there were no bidders the property was purchased by Respondent No.2 for a sum of Rs.97,04,222/-.

4. In the above background Shri Poonalekar, the learned counsel of the petitioner, submits that the petitioner-company was dispossessed of the said property in violation of Rule 22(11) of the Multi-State Co-operative Societies (Registration, Membership, Direction and Management, Settlement of Disputes, Appeals and Revisions) Rules, 1985 (Rules, for short). However, the learned counsel of the petitioner has not taken any ground in the petition in terms of the said Rules and, therefore, we are not inclined, in the light of the facts stated hereinabove, to permit the petitioner to urge a ground which is not taken in the petition. On behalf of the petitioner, no other grievance has been made.

5. The petitioner would certainly be entitled to pursue the remedies

available to the petitioner under the provisions of law under which the award was made by the learned Assistant Registrar on 26.8.1995 and which was subsequently executed against the said M/s Walbro Constructions and the petitioner-company as guarantors. On facts, we find that this is not a fit case to invoke discretionary jurisdiction under Article 226 of the Constitution of India. We leave the petitioner-company to pursue the remedies available to the petitioner under the aforesaid provisions of law.

6. We find there is no merit in this petition and the same is hereby summarily rejected.

A. P. LAVANDE, J.

N. A. BRITTO, J.

sl.